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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1059

ALFRED D. LAURENCE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Alfred D. Laurence, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on the 25th day of February 1965.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit which is not yet reported is printed in Appendix A, page 7.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on February 25, 1965, (Appendix A, page 7). Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). Extension granted by Mr. Justice Black to April 12, 1965.

QUESTIONS PRESENTED

1. Does the administration of criminal justice now require that a uniform rule which rejects the right-wrong test be adopted for determining the criminal responsibility of mental defectives.

2. Whether the Fifth Circuit has misconstrued the rule of *Davis* v. *United States* 160 U.S. 469 (1895) as commanding it to adopt the narrow and restrictive right-wrong test when in fact *Davis, supra,* and *Matheson* v. *United States* 277 U.S. 540 (1913) enunciate a test which encompasses a broad examination of the general behavior of the mentally ill defendant.

STATEMENT

Alfred D. Laurence was convicted in the United States District Court for the Southern District of Florida on June 7, 1963, (R. 1221) for violations of the mail fraud statute (18 U.S.C. § 1341), Section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. § 77q(a)(1)) (R. 1137, et seq); and conspiracy to violate those sections as well as Section 5(a) of the Securities Act of 1933 (15 U.S.C. §§ 77e(a)(1), 77e (a)(2) and 77e (c)). (R. 1172-1179).

The trial commenced in January 1962 but was discontinued upon a finding by the trial judge that Mr. Laurence was mentally incompetent to understand the nature of the proceedings and mentally incompetent to properly assist in the preparation and conduct of his

defense. Mr. Laurence was placed under mental observation at the Medical Center for Federal Prisoners at Springfield, Missouri. On August 2, 1962, he was found competent to stand trial and he was released.

The prosecution was resumed on April 1, 1963 before the Honorable David W. Dyer, United States District Judge and a jury. (R. 3-4)

At the trial Mr. Laurence raised the defense of insanity. The trial judge instructed the jury in accordance with the right-wrong test (R. 1110). The defense objected to this instruction and tendered instructions framed in accordance with the law of two other Federal circuits, namely, the District of Columbia Circuit and the Third Circuit which circuits have renounced the right-wrong test. The tendered instructions were rejected by the trial judge. (R. 1225-1227) The instructions as given are reprinted in Appendix B, page 8; the instructions tendered are reprinted in Appendix C, page 9.

The right-wrong instruction was challenged by the defendant in his appeal to the Fifth Circuit Court of Appeals. In affirming the conviction the Fifth Circuit Court of Appeals approved the right-wrong instruction on the authority of *Howard* v. *United States*, 232 F.2d 274. (See Appendix "A", p. 7).

REASONS FOR GRANTING THE WRIT

The Fifth Circuit, in approving the right-wrong test for determining criminal behavior places itself in conflict with decisions of other circuits and specifically the United States Court of Appeals for the District of Columbia, *Durham* v. *United States*, 214 F.2d 862 (CADC, 1954); and the Court of Appeals for the Third Circuit, *Currens* v. *United States*, 290 F.2d 751 (CA-3, 1961).

Currens and *Durham* have renounced the restrictive right-wrong test in favor of an inquiry which allows

the jury to receive the benefit of a broad scientific consideration of the defendant's behavior. The right-wrong test disposes of the issue of criminal responsibility by seeking the answer to a single question placed on a moral basis. *Currens* and *Durham* rely for guidance upon the settled knowledge of the behavioral sciences in the field of mental disorders. A quotation from Durham is pertinent:

> We find that as a exclusive criterion the right-wrong test is inadequate in that it does not take sufficient account of psychic realities and scientific knowledge, and (b) it is based on one symptom and so cannot validly be applied in all circumstances . . . We conclude that a broader test should be applied.
>
> (*Durham* v. *United States*, *supra*, 214 F.2d 862, at page 3)

The trial court (R. 1110) as well as the Court of Appeals for the Fifth Circuit bound itself by *Howard* v. *United States*, 232 F.2d 274 which follows the right-wrong test. *Howard* in turn rests itself on *Davis* v. *United States*, 160 U.S. 469 (1895). But *Davis* did not command an adoption of the right-wrong test, even in 1895. After *Davis* this Court decided *Matheson* v. *United States*, 277 U.S. 540 (1913), a homicide case in which the defense of insanity was raised. The trial judge instructed the jury in accordance with the right-wrong test and then added:

> If you believe the shooting was the direct result or offspring of insanity, you should acquit, if of passion or revenge, you should convict.

This language is the *Durham Rule* stripped of all it glosses.

This Court has not examined since 1913 the questions raised by the insanity defense. The rulings of *Davis* and *Matheson* are now being accorded contradictory interpre-

tations. Most circuits rely on them to justify an adherence to the right-wrong test. However, the United States Court of Appeals for the District of Columbia and the Court of Appeals for the Third Circuit interpret these same cases as placing them under no mandate to continue with the outmoded right-wrong test.

The right-wrong test was evolved at a time when vindictiveness and retribution were the only philosophies for dealing with offenders. From the inception of M'Naghten to the present day there has unfolded another philsophy, that of rehabilitation. The tests advocated in *Durham* and *Currens* foster treatment and rehabilitation of the sick rather than sterile punishment, implicit in *M'Naghten.*

The national importance of the issue posed by this case is demonstrated by comments of the Courts seeking a uniform rule for the mentally disordered criminal.[1] Furthermore, there are many studies being conducted, both private and government, focusing on the problem.[2] Now would be an appropriate time for this Court to announce a uniform rule concerning criminal responsibility to govern Federal Courts and to guide state courts.

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[1] See *Carter* v. *U.S.* 325 F2d 697 (1963) at page 706 (dissent Brown, J.: It is time—and when the Court voted to hear the case en banc, I suppose that all of us thought this would be the time—for the full Court to give critical review to this important problem of federal criminal law. But an inability to muster a majority out of the Judges sitting has again postponed this day. Perhaps offsetting the awesome consequence that this particiular appellant has something substantively less than the appeal as a matter of right which 28 U.S.C.A. § 1291; F.R. Crim.P. 37, affords him, *is the possibility that this impasse will, in part, impel acceptance of this case for review by the Supreme Court. There are many experienced in this field as lawyers, as teachers, and District Judges on the firing line who think that the 66 years since 1897 is long enough to warrant a second, if not a new, look at this pressing recurring problem.* (Emphasis supplied; foot-notes deleted)

[2] "Application of Psychiatry to Study, Observation and Treatment of the Federal Offender" by Judge John W. Oliver, 35 F.R.D. 459.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20690

ALFRED D. LAURENCE AND JOHN W. H. PRICE,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(February 25, 1965.)

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and GROOMS, District Judge.

PER CURIAM: The appeal of these two defendants from Securities Act and Mail Fraud charge convictions and sentences raises only the general issue as to sufficiency of the evidence to sustain a verdict of guilt.

We find abundant evidence to warrant submission of the case of both appellants to the jury.

We also find that the defense of insanity interposed by Laurence was presented to the jury on a proper charge. *Howard* v. *United States*, 232 F. 2d. 274.

The judgment is AFFIRMED.

APPENDIX B

(Trial Court's Instruction)

You are instructed that there has been introduced into evidence on behalf of the defendant Laurence evidence which tends to prove that at the time of the commission of the alleged offense here involved, the defendant was suffering from a mental defect or disease. You are further instructed that if the whole evidence presented to you does not exclude beyond a reasonable doubt the hypothesis of mental illness, as I shall explain in my next instruction, you should find the defendant not guilty.

If you find that due to mental illness at the time of the alleged crime, the defendant Laurence did not know the difference between right and wrong or was unable to refrain from doing wrong, you must acquit him. Only if you find from all of the evidence beyond a reasonable doubt that he was sane or if mentally ill, that he knew the difference between right and wrong and was able to refrain from doing wrong, may you convict him.

APPENDIX C

(Defendant's Tendered Instructions)

No. 1

You are instructed that if you find from the evidence that at the time of committing the act charged, the defendant, as a result of disease of mind (or mental deficiency) (a) did not know the nature and quality of the act or (b) did know that it was wrong or (c) that he was incapable of preventing himself from committing the act, then you must acquit him.

No. 2

You are instructed that in determining the guilt or the innocence of this defendant you may consider that a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

No. 3

If you the jury believe beyond a reasonable doubt that the defendant, Laurence, was not suffering from a disease of the mind at the time he committed the criminal act charged, you may find him guilty. If you believe that he was suffering from a disease of the mind, but believe beyond a reasonable doubt that at the time he committed the criminal conduct with which he is charged he possessed substantial capacity to conform his conduct to the requirements of the law which he is alleged to have violated you may find him guilty. Unless you believe beyond a reasonable doubt that Laurence was not suffering from a disease of the mind or that despite that disease he possessed substantial capacity to conform his conduct to the

requirements of the law which he is alleged to have violated you must find him not guilty by reason of insanity. Thus, your task would not be completed upon finding, if you did find, that the accused suffered from a disease of the mind. He would still be responsible for his unlawful act if you found beyond a reasonable doubt that at the time he committed that act, the disease has not so weakened his capacity to conform his conduct to the requirements of the law which he is alleged to have violated that he lacked substantial capacity to conform his conduct to the requirements of that law. These questions must be determined by you from the facts which you find to be fairly deducible from the evidence in this case.